



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 408.03-00

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Legend:

SE: T: EP: RA: +3

Taxpayer A:

IRA X:

Date 1:

Month 1:

Custodian J:

Custodian M:

State O:

Amount A:

Amount B:

Dear :

This is in response to letters dated June 10, 2008, November 24, 2008, and January 30, 2009, submitted on your behalf by your authorized representative in which you request a ruling that the failure to distribute the entire required distribution amount for the calendar year 2007, and a proposed makeup distribution for the 2008 calendar year will not be considered a modification of a series of substantially equal period payments and will not be subject to the 10 percent additional tax imposed on premature distributions under Code section 72(t)(1).

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, under age 59 $\frac{1}{2}$, owns IRA X. In 2003 Taxpayer A established an arrangement with Custodian J, the custodian holding IRA X under which Taxpayer A would receive annual IRA X distributions in the form of substantially equal periodic payments under the fixed amortization method using an interest rate that was not more than 120 percent of an applicable federal mid-term rate for Month 1 and using the single life expectancy table in section 1.401(a)(9)-9, Q&A-1 of the Income Tax Regulations. Under Taxpayer A's arrangement with Custodian J, the custodian would withhold an appropriate amount to pay State O and federal taxes due on the gross distribution from IRA X.

Based on these factors, Taxpayer A's annual distribution from his IRA X beginning in 2003 was Amount A from which Federal and State taxes would be withheld. This arrangement was continued for years _____ and _____

In 2006, Custodian M, a successor custodian of IRA X, continued Taxpayer A's arrangement and continued to pay all federal and state taxes due on the annual distributions. However, in year 2007, Custodian M erroneously failed to make a distribution of Amount B to pay the State O taxes due on the annual distribution. Taxpayer A was unaware that Amount B had not been distributed for year _____ until he received his 1099-R from Custodian M in 2008.

Taxpayer A contacted Custodian M about the distribution error and as a result Custodian M issued a letter dated Date 1. The Date 1 letter states that Custodian M, due to its administrative error, did not pay the State O taxes due on the 2007 annual IRA X distributions.

Taxpayer A chose to pay the State O taxes due for _____ from his own non-IRA X funds instead of allowing IRA X to pay the _____ State O taxes pending guidance from the Internal Revenue Service.

Based on the foregoing, Taxpayer A requests a ruling that the failure to distribute the entire required distribution amount for the calendar year _____, and a proposed makeup distribution for the _____ calendar year will not be considered a modification of a series of substantially equal period payments under Code section 72(t)(2)(A)(iv) and will not result in the imposition of the 10 percent additional tax under section 72(t)(1).

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72.

Code section 72 provides rules for determining how amounts received as annuities, endowments, or life insurance contracts and distributions from qualified plans are to be taxed.

Code section 72(t)(1) provides for the imposition of an additional 10 percent tax on early distributions from qualified plans, including IRAs. The additional tax is imposed on that portion of the distribution that is includible in gross income.

Code section 72(t)(2)(A)(iv) provides that section 72(t)(1) shall not apply to distributions that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or joint lives (or joint life expectancies) of such employee and his designated beneficiary.

Code section 72(t)(4) imposes the additional limitation on distributions excepted from the 10 percent tax by section 72(t)(2)(A)(iv) that, if the series of payments is subsequently modified (other than by reason of death or disability) before the employee's attainment of age 59 1/2, then the taxpayers tax for the first taxable year in which such modification occurs shall be increased by an amount determined under regulations, equal to the tax that would have been imposed except for the section 72 (t)(2)(A)(iv) exception, plus interest for the deferral period.

Section 1.401(a)(9)-9 of the regulations provides tables that are to be used in connection with computations under section 72 and the regulations thereunder. Included in this section are tables giving life expectancies for one life (Q&A-1) and joint life and last survivor expectancies for two lives (Q&A-3).

Notice 89-25 was published on March 20, 1989, and provided guidance, in the form of questions and answers, on certain provisions of the Tax Reform Act of 1986 ("TRA '86"). In absence of regulations on Code section 72(t), this notice provides guidance with respect to the exception to the tax on premature distributions provided under section 72(t)(2)(A)(iv). Q&A-12 of Notice 89-25 provides three methods of determining substantially equal periodic payments for purposes of section 72(t)(2)(A)(iv).

Revenue Ruling 2002-62, 2002-42 I.R.B. 710, which was published on October 21, 2002, modifies Q&A-12 of Notice 89-25. Rev. Rul. 2002-62 provides, among other things, that payments are considered to be substantially equal periodic payments within the meaning of Code section 72(t)(2)(A)(iv) if they are made in accordance with the required minimum distribution method, the fixed amortization method or the fixed annuitization method (the three methods described in Q&A-12 of Notice 89-25). The fixed amortization method provides that the annual payment for each year is determined by amortizing in level amounts the account balance over a specified number of years determined using the chosen life expectancy table and the chosen interest rate. Under this method, the account

balance, the number from the chosen life expectancy table and the resulting annual payment are determined once for the first distribution year and the annual payment is the same amount in each succeeding year.

Taxpayer A represents that Custodian M failed to make the scheduled payment of the State O taxes due on the annual distributions and caused him to receive a distribution from IRA X for distribution year 2007 that was less than the amount determined under the method he chose to commence receiving payments from IRA X. Taxpayer A further represents that the error was not detected until he received his 1099-R from Custodian M in 2008. Taxpayer A proposes to receive a "makeup" distribution in 2009 of Amount B that would satisfy his annual payment distribution requirement for 2007 as determined under the fixed amortization method. When this amount is added to the amount calculated for , Taxpayer A will receive an amount for calendar year that will be more than the annual payment determined under the fixed amortization method. Other than this "make-up" distribution which will be made in , Taxpayer A will continue to use the fixed amortization method for calculating the annual payments from his IRAs.

Based on the foregoing we conclude that the failure to distribute the entire required annual payment from IRA X for the , calendar year and the subsequent "make-up" distribution for the year that will be made in calendar year will not be considered a modification of a series of substantially equal periodic payments under Code section 72(t)(2)(A)(iv) and, therefore will not be subject to the 10 percent additional tax under on premature distributions under section 72(t)(1).

This ruling assumes that IRA X is an IRA within the meaning of Code section 408 at all relevant times.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact

Sincerely yours,

A handwritten signature in black ink, appearing to read "Frances V. Sloan", with a long horizontal flourish extending to the right.

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice of Intention to Disclose